IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(BAIL) NO. 13 OF 2007

Nafiyaz Sheikh,
s/o Naruddin Mamlekar,
19 years of age,
Bachelor, Student,
Permanently residing at
B-5, 3rd floor,
Raghunath Apartment,
Opp. Joshi Auto Service,
Vasco-da-Gama, Goa.
(Presently lodged in
Judicial Custody Sub-Jail
Sada, Vasco-da-Gama, Goa). ... Applicant

versus

State of Goa
(Through Officer I/C.
Panaji Police Station) ... Respondent

Mr. S. G. Dessai, Senior Advocate with Mr. S. Dessai, Advocate for the Applicant.

Ms. Winnie Coutinho, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 21ST FEBRUARY, 2007.

ORAL JUDGMENT

The applicant herein is accused no.2 whose bail application has been rejected by Order dated 22-12-2006 of the learned Children's Court, Panaji and therefore has approached this Court for the same.

2. The applicant Nafiyaz/A-2 was arrested on 14-8-2006 and since then is in custody. A charge-sheet has been filed against him along with four others with the allegation that all the accused hatched up a criminal conspiracy and kidnapped(abducted?) Mandar Surlikar for ransom and kept him under confinement and then assaulted him on his head with baseball bats and strangulated him by putting scout and guide rope around his neck knowing that such an act would cause his death and thereby intentionally killed him and thereafter dumped his dead body at an isolated place in Arla Keri and also destroyed some of the articles used during the commission of the offences.

3. The charge-sheet was filed on 10-11-2006 against the said accused under Sections 364-A, 302, 201 and 120-B, I.P.C. and Section 8(2) of the Goa Children's Act, 2003.

4. During the investigations, confessional statement under Section 164 of the Code of Criminal Procedure, 1973 was recorded of Al-Saleha Beig/A-5. After the filing of the charge-sheet before the Children's Court, the said Beig/A-5 has filed an application on 12-1-2007 praying that he be made an approver, by tendering pardon and the Respondent/State has given its no objection for the said application of Beig/A-5 and the matter is pending for orders before the learned Children's Court, Goa as the other accused have objected to the said application.

5. The said confessional statement of Beig/A-5 is sought to be used on behalf of the applicant/A-5 to extricate himself from the gravity of the offence under Section 364-A, I.P.C. The respondent/State has also not contested the facts disclosed by Beig/A-5 in the said confessional statement and it also otherwise appears that the rest of the investigations and

collection of evidence was done in the light of the said statement of Beig/A-5.

6. The prosecution story has it, as narrated by Beig/A-5 in his said confessional statement, that Ryan/A-4 and he were classmates and later played basket ball together and so also partied together on Saturdays. The applicant Nafiyaz/A-2, Rohan/A-1 were known to Ryan/A-4 and he talked about them to Nafiyaz/A-2. Ryan/A-4, Rohan/A-1 and Nafiyaz/A-2 started a venture named "MAG", a name formed by the first letters of their respective nick names. After the publication of a periodical named "VOX POPULI", a small get together was organized which was attended to by Beig/A-5 and he was told by three of them that his help would be required to distribute the periodical since they did not know to drive the car properly and did not have driving license. Ryan/A-4 and Beig/A-5 also attended parties on Saturdays. The periodical "VOX POPULI" did well for the first two or three months and they purchased a Maruti Alto Car on instalments and it appears that thereafter the life style of Rohan/A-1, Nafiyaz/A-2 and Ryan/A-4 changed in that they started drinking almost regularly. Ryan/A-4 is stated to have told Beig/A-5 that they used to spend a lot of

money on food, drinks and fuel for the car and there was no money left, of their earnings. In the meantime, Xavier, the son of Alfran came into the picture as he had a bike to be sold and Beig/A-5 was interested in purchasing the same and therefore Beig/A-5 went to take a test drive, accompanied by Ryan/A-4. The refusal by Xavier to give a test drive of the said bike made Ryan/A-4 angry and they left the place in that mood and as they left, it is stated that Ryan/A-4 told Beig/A-5 that he wanted to hit the said Xavier and he would do it in case he got an opportunity. Nevertheless, on the next date, Ryan/A-4 accompanied Beig/A-5 when they went to purchase the bike from the said Xavier and thereafter Ryan/A-4 and Beig/A-5 went for lunch together. As they were having lunch, Ryan/A-4 told Beig/A-5 of a plan of kidnapping the said Xavier so that they could get some money from his father, as ransom. A plan, to which Beig/A-5 did not agree, was drawn up but it was subsequently given up as Ryan/A-4 came to know that there was a dispute between the parents of the said Xavier and Xavier's father's money was blocked.

7. Then, there is another incident narrated by Beig/A-5 and that is Ryan/A-4 telling him that he wanted to kill a boy

who had tried to have sex with his girlfriend.

8. Later, Rohan/A-1, Nafiyaz/A-2, Shanker/A-3 and Ryan/A-4 opened another business by name "DREAMWAYZ" and Beig/A-5 invested Rs.4000/- in the said business. Beig/A-5 had his own business of a boutique which was opened on 5-5-2006 in which he was helped by Ryan/A-4 from the previous day and Rohan/A-1 and Nafiyaz/A-2 had attended the inauguration along with Shanker/A-3. Later, it appears that in the first week of August, all the five accused had a meeting/discussion about the losses suffered by them and they also asked Beig/A-5 as to how he was doing in his business and they told him that they had no money even to pay the car instalments and at that Beig/A-5 told them about his need of Rs.1,00,000/- to purchase additional stock for his boutique and asked for their help, if they knew of any Bank which would give him a loan on easy terms and at this point of time Rohan/A-1 came with his plan of abducting Mandar Surlikar, their friend who had also given an advertisement to advertise that he was a D.J. on the said "VOX POPULI" and whose father was a builder. He told them after getting the money from the father of the said Mandar Surlikar they could share it and some of it with Mandar and send him

back in the evening so that he could say that he did not know who had kidnapped him. As per Beig/A-5, Ryan/A-4 had discussed of a similar plan earlier regarding the said Xavier with Rohan/A-1, Nafiyaz/A-2 and Shanker/A-3. The plan to abduct or kidnap Mandar was agreed to by all the five accused, as stated by Beig/A-5 and the latter told them, whenever he was called to discuss the plan, that he should be told as what was to be done and he would agree to do his part. As per Beig/A-5, the planning was completed by Ryan/A-4, Rohan/A-1, Nafiyaz/A-2 and Shanker/A-3 and they also brought the necessary things to put the plan in action like injections, syringes, medical white tape, three or four white cotton ropes, two baseball bats, three pairs of medical gloves, two number plates with different numbers which were to be used for the car. The plan did not materialize on 11-8-2006 as Mandar could not come to Panaji on that day. It appears that a Sim Card was purchased and loaded in Ryan/A-4's mobile phone and Mandar was called on the pretext that he was being called from Mumbai as they wanted to organize a show in Goa and Mandar being a D.J., they wanted to engage his services. The plan was therefore cancelled on 11-8-2006 and on Sunday, 13-8-2006 Rohan/A-1 and Shanker/A-3 came over to Ryan/A-4's house and discussed the

plan of getting Mandar again and Beig/A-5 was told that Mandar would come on the next morning and was further told that Beig/A-5 should be with him for the full day and he would be given Rs.5,00,000/- and on the next morning(Monday) Ryan/A-4 called Nafiyaz/A-2 and Rohan/A-1 from the mobile and told them that each one of them would get Rs.5,00,000/- and on 14-8-2006 Ryan/A-4 was in touch with Rohan/A-1, Nafiyaz/A-2 and Shanker/A-3 through the mobile of Beig/A-5 and on 14-8-2006 at about 9 a.m. or so Rohan/A-1, Nafiyaz/A-2 and Mandar(since deceased) were heading from Vasco da Gama to Ucassaim and were in touch with Ryan/A-4 and they were travelling in the Alto Car and Shanker/A-3 was coming on Honda Dio Scooter and when they reached Panaji, Rohan/A-1 got down from the car and sat on the bike of Shanker/A-3 while Mandar and Nafiyaz/A-2 proceeded in the car while Rohan/A-1 and Shanker/A-3 followed them on the bike. When Nafiyaz/A-2 and Mandar were about to reach Ryan/A-4's house he was informed about it. On reaching the house of Ryan/A-4, the door was opened by Beig/A-5 and at that time, Nafiyaz/A-2 introduced Beig/A-5 to Mandar and as requested by Ryan/A-4 they were taken to the dining room when Ryan/A-4 started talking to them. Shanker/A-3 and Rohan/A-1 arrived on their

motorcycle and sat in the bedroom. Ryan/A-4 and Nafiyaz/A-2 knew that Rohan/A-1 and Shanker/A-3 had arrived and Ryan/A-4 told Beig/A-5 to talk to Mandar and in the meantime Nafiyaz/A-2 came out and went to the bedroom to talk to Rohan/A-1 and Shanker/A-3. Beig/A-5 had some casual conversation with Mandar whilst the other four were talking in the bedroom and thereafter Rohan/A-1 told Beig/A-5 that Rohan/A-1 would put some loud music inside the dining room and at that time he(A-5) should give a slap to Mandar to scare him and that he(Ryan/A-4) would also scare him and when music was put Beig/A-5 gave a slap to Mandar but Mandar bounced back and Ryan/A-4 caught him by his neck and made him to sit on the sofa and when Beig/A-5 approached Mandar again, the latter started kicking the former with his legs and since both of them could not control Mandar, Beig/A-5 called Rohan/A-1 who came and told Mandar to calm down and further told him that nothing was going to happen and he should do whatever he was told to do. While Mandar was being held by Ryan/A-4 and Beig/A-5, Rohan/A-1 put medical tape on his lips and on his hands and immobilized him and then Rohan/A-1 put a pillow cover on his face and Shanker/A-3 came in the dining room and tied his hands and legs properly with ropes and at this

time Rohan/A-1 told Mandar that nothing would happen to him but he should do whatever they said. Thereafter the tape was removed from the lips of Mandar and a message from Mandar was recorded twice stating that "he has been kidnapped by some people and do what they say and give them whatever they asked and do not go to the Police, I am safe". After that, Mandar asked Rohan/A-1 what was happening and Rohan/A-1 repeated that he should not worry and he should do whatever he said. Mandar then asked for Nafiyaz/A-2 and Rohan/A-1 told him that Nafiyaz/A-2 was unconscious as those people had hit him and those people were dangerous. Mandar told Rohan/A-1 to take care of Nafiyaz/A-2 and see that nothing happens to him. In the meantime, Rohan/A-1 filled two syringes with Vodka and injected one syringe on Mandar's hand and then Ryan/A-4 started hitting Mandar with kicks and blows but they tried to prevent it and separate Ryan/A-4. When Mandar asked for water to drink Ryan/A-4 gave him bad words and told him to drink Vodka and Beig/A-5 brought a glass of water and gave Mandar to drink while Shanker/A-3 removed the pillow cover so that he could drink. When Mandar complained that his hands were tied too tight, Ryan/A-4 gave him bad words and slapped him and when Shanker/A-3 stated that they should loosen his

hands a little and Beig/A-5 went to loosen them, Ryan/A-4 gave them bad words and prevented them from loosening the hands of Mandar.

9. Rohan/A-1, Nafiyaz/A-2 and Shanker/A-3 were sent to Panaji and Beig/A-5 was told by Ryan/A-4 about the instructions he had given to all three of them. Shanker/A-3 was instructed to give a call to Mandar's father and demand money from him and to let him hear his son's recording which was recorded earlier and also to tell Mandar's father not to go to the Police.

10. Mandar's father Deepak M. Surlikar in the meantime had lost contact with Mandar after he tried to contact him on his mobile. At about 13.15 hours he got a call from Mandar's mobile. According to him, when he picked up the said phone call a male person spoke to him in hindi saying that his son was kidnapped and that he should come with Rs.50,00,000/- near Food Land Hotel at Miramar and that the Police, the wife or anybody else should not be informed. According to him, his son Mandar spoke to him saying that he had been kidnapped and he was crying and the phone was immediately switched off. The

father of Mandar got in touch with Rohan/A-1 and Nafiyaz/A-2 because his son had gone along with them and they told him that at about 10-30 hours when they were at Miramar near Sharda Mandir a silver colour Hyundai Accent car had come and stopped and Mandar had proceeded towards the car and after having a talk with the driver had told them that he was going in the said car and that he would return soon and thereafter Mandar had gone in the said car. Presuming that the information given by Rohan/A-1 and Nafiyaz/A-2 was correct, Deepak M. Surlikar lodged a complaint with Vasco Police Station which came to be registered under Section 364-A, I.P.C. and as the incident as alleged had taken place at Panaji the same was sent to Panaji Police Station for further investigations.

11. In the meantime, Ryan/A-4 injected the other injection on Mandar's other hand and after Ryan/A-4's return from Mapusa he got a call from Rohan/A-1 that he was called to Vasco Police Station in connection with Mandar's disappearance and prior to that Ryan/A-4 was informed that Mandar's father had refused to pay any amount whereupon Ryan/A-4 called Shanker/A-3 to contact Mandar's father and to threaten him so that he gives the money. As per the plan, Rohan/A-1 and

Shanker/A-3 were supposed to collect the money from near the place of Food Land Hotel. In the meantime, Ryan/A-4 continued to drink and Beig/A-5 played games on the laptop when the latter heard a sound from the dining room and when he saw he found that Ryan/A-4 was hitting Mandar on his head with a baseball bat and his head was bleeding and he questioned Ryan/A-4 as to what he was doing and whether they were not suppose to release Mandar in the evening but Ryan/A-4 replied that Mandar was acting too smart and was asking to release his hands. In the meantime, Ryan/A-4 phoned Shanker/A-3 who was in Panaji to come immediately to Ucassaim and fill petrol in the car whilst coming and when Shanker/A-3 came, Beig/A-5 narrated about Ryan/A-4's behaviour towards Mandar and when Beig/A-5 went to the dining room after about five to ten minutes he saw Mandar lying on the floor and Ryan/A-4 was standing with one leg on Mandar's face and the other leg with a rope which was around Mandar's neck and the said rope was being held by Ryan/A-4 with both his hands and they came to know that Mandar was already dead as there was no response from him. Both, Beig/A-5 and Shanker/A-3 were shocked and when Ryan/A-4 was questioned by Beig/A-5 as to why he had killed Mandar, Ryan/A-4 replied that Mandar had already seen them

and in case he had to be released he would have complained to the Police and that they would also be arrested and they would go to jail. Thereafter, Ryan/A-4 threatened Shanker/A-3 and Beig/A-5 that they should do whatever he told them failing which they would face dire consequences. The body of Mandar was then dragged to the door and with the help of Shanker/A-3 and Beig/A-5 it was put in the car and Beig/A-5 was told to drive the car and threatened that if he was caught he would take him along with him. Shanker/A-3 was advised to go to the Office in Panaji after they left and was also told to get rid of anything which remained. Ryan/A-4 was getting calls after calls from Rohan/A-1 inquiring as to what had happened to Mandar and whether he was killed and Rohan/A-1 told Ryan/A-4 to see that he was killed once for all. When they reached somewhere before Ponda, the car was driven by Beig/A-5 and was stopped at the instructions of Ryan/A-4 and the latter then pulled the body out of the car and allowed it to fall on the road and thereafter Ryan/A-4 made a call to Rohan/A-1 and told him that he had already disposed of the body.

12. The body was found on 16-8-2006 at Arla Keri by Ponda Police Station which registered a U.D vide No.80/2006

and sent the body for post mortem examination which later revealed that the death of Mandar Surlikar was due to Asphyxia as a result of ligature strangulation vide injury no.1, associated with cranio cerebral damage as a result of blunt force impact by object or surface vide injuries no. 2 and 3, which were individually and collectively necessarily fatal.

13. Meanwhile, the interrogation of Rohan/A-1 and Nafiyaz/A-2 continued and it appears that during further interrogation Rohan/A-1 and Nafiyaz/A-2 admitted of having kidnapped and killed Mandar with the help of other three accused, etc.

14. Even before the body of Mandar was found or the death of Mandar was confirmed, the complaint of Mandar's father was registered by Vasco Police Station under Section 364-A of I.P.C. and as rightly submitted by learned Senior Counsel the entire case of the prosecution can be brought within the purview of the said Section. Section 364-A was brought in, for the first time, in the Indian Penal Code with effect from 22-5-1993 and was also amended from 26-5-1995. It provides

for punishment for kidnapping for ransom. It reads thus:-

> Whoever kidnaps or abducts any person
>
> or keeps a person in detention after such kidnapping or abduction
>
> and threatens to cause death or hurt to such person,
>
> or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt,
>
> or causes hurt or death to such person
>
> in order to compel the Government or any foreign State or international inter-Governmental organization or any other person
>
> to do or abstain from doing any act
>
> or to pay a ransom,
>
> shall be punishable with death, or imprisonment for life, and shall also be liable to fine.

15. Apparently, it is the seventh offence brought in, in the Indian Penal Code which provides for death penalty or imprisonment for life at a time when a debate had begun

whether retention of death penalty is at all justified. As can be seen from objects and reasons behind Section 364-A being brought into the Indian Penal Code, the same was brought based on recommendations of the Law Commission in its 42nd Report. It was found that the existing provisions of law had proved to be inadequate as deterrence in such matters. Parliament in its wisdom has thought fit that a separate offence was required to be carved out in respect of kidnapping or abduction for ransom and provide for it very deterrent punishment. As stated by the Apex Court in **Malleshi** v. **State of Karnataka**((2004) 8 SCC 95), the essential ingredients which are required to be proved to attract the provisions of Section 364-A are:-

1. that the accused kidnapped or abducted the person;

2. kept him under detention after such kidnapping and abduction; and

3. that the kidnapping or abduction was for ransom.

16. There is no doubt that the case of the prosecution is based on circumstantial evidence and the statement of Beig/A-5. The contention of the learned Senior Counsel is that the facts

disclosed in the confessional statement of Beig/A-5 do not disclose that there was a conspiracy hatched by all the accused much less the applicant Nafiyaz/A-2 to commit the murder of Mandar or to kidnap him for ransom in terms of Section 364-A, I.P.C. and at the most the facts disclosed may show that the conspiracy was only to kidnap, Mandar, their friend however without any intention of causing any harm to him and by considering him as a part of conspiracy and therefore the applicant/A-2 could not be charged under Section 364-A or Section 302, I.P.C. as there is no conspiracy spelt out by the prosecution as against him. The learned Senior Counsel further submits that there was no intention on the part of the applicant Nafiyaz/A-2 to cause Mandar any harm and therefore Section 364-A is not attracted against the applicant Nafiyaz/A-2 because it is attracted only when a person is kidnapped for ransom on threat to cause his death or hurt in order to compel him to do or abstain from doing any act. According to the learned Senior Counsel in the present case, ransom was claimed from the father of Mandar and he was supposed to be held back till the time ransom amount was delivered by his father. The learned Senior Counsel next submits that the applicant Nafiyaz/A-2 had not collected or procured any weapon of offence and was not

concerned with the weapons allegedly used to confine Mandar or assault him after he was brought to Ryan/A-4's house at Ucassaim. As per the learned Senior Counsel, the applicant Nafiyaz/A-2 had only allegedly agreed to bring Mandar to the house of Ryan/A-4 without having any knowledge that he was going to be assaulted after Mandar was brought to the house or eventually to be killed. The learned Senior Counsel further submits that the decision to harm and kill Mandar was not the decision of the applicant Nafiyaz/A-2 nor he was part of the said decision or conspiracy whatsoever in that regard.

17. On the other hand, the learned Public Prosecutor has submitted that as per the confessional statement recorded of Beig/A-5, the applicant Nafiyaz/A-2 was very much a part of the conspiracy to kidnap the said Mandar and not only that the confessional statement shows that all preparations were made by buying the necessary articles in order to carry out the said conspiracy. The learned Public Prosecutor further points out that the applicant Nafiyaz/A-2 also went to Mapusa in the company of Shanker/A-3 and purchased two more ropes, as seen from the recovery panchanama dated 29-8-2006. The learned Public Prosecutor further points out that the applicant/A-2 was

with Rohan/A-1 when the latter was making calls after calls to Ryan/A-4 inquiring as to what had happened to Mandar and whether he was killed, as disclosed in the said confessional statement of Beig/A-5 and Ryan/A-4 telling Rohan/A-1 that he had already disposed of the dead body.

18. In my view, the facts disclosed by Beig/A-5 in his confessional statement recorded under Section 164 of the Code are insufficient to extricate the applicant from the first part of the conspiracy when Mandar, the deceased, was brought by him from Vasco da Gama to the house of Ryan/A-4 at Uccasaim till the time the father of Mandar refused to pay the ransom as was demanded from him through the message recorded from Mandar and conveyed to him through Shanker/A-3. The confessional statement clearly indicates that the applicant Nafiyaz/A-2 was very much part of the planning and was very much present when necessary articles to execute the plan were purchased like syringes, medical white tape, baseball bats, medical gloves, etc. One may be constrained to ask as to why these articles were purchased, if not to be used in the manner they were used subsequently. The applicant Nafiyaz/A-2 was very much present in the house when the plan to scare Mandar and tie him was

executed by Rohan/A-1, Beig/A-5 and Ryan/A-4. Although, the said plan might have been carried out under the noise of loud music it could not be said that the applicant Nafiyaz/A-2 was unaware of the same only because he chose to remain in another room of the same house. The recovery panchanama dated 29-8-2006 shows that it is again the applicant Nafiyaz/A-2 who went in the company of Rohan/A-1 and purchased two more ropes, the earlier purchased ropes having been found to be insufficient to tie down the said Mandar. In other words, the facts stated by Beig/A-5 and in the said panchanama dated 29-8-2006 show that when the ropes were found insufficient it was the applicant Nafiyaz/A-2 who went along with Rohan/A-1 and purchased two ropes from the same dealer Shri Kalangutkar from whom ropes were purchased earlier and who has identified the applicant Nafiyaz/A-2 as the person who came to purchase the said two ropes. This is not the stage to go into the probative value of the said statements. In this view of the matter, it could not be said that the applicant Nafiyaz/A-2 had no intention of causing any harm to Mandar. The facts show that when the ropes were found to be insufficient, it is the applicant Nafiyaz/A-2 who went and brought in more ropes to pin down Mandar and therefore the necessary ingredients, irrespective

whether the death was caused or not at that stage, were completed to attract Section 364-A, I.P.C. in case of the applicant Nafiyaz/A-2, as well. The facts forming first part of the transaction clearly show that the applicant Nafiyaz/A-2 was very much an active participant in abducting Mandar, assaulting him, tying him down and making a demand for ransom to his father, which failed and this is enough to attract the provisions of Section 364-A, I.P.C. which now provides for stringent penalty of death or imprisonment for life. The considerations for the grant of bail whether under Section 437(1) or Section 439(1) of the Code are the same. The gravity of the offence and the severity of the punishment provided for are the two foremost considerations to be taken into account whilst deciding a bail application. Irrespective of the subsequent plan to cause death of the deceased, the facts show that all the ingredients of Section 364-A as spelt out by the Apex Court, in decision referred to herein above, were satisfied for the purpose of invoking Section 364-A. Since Section 364-A provides punishment of death or imprisonment for life, in my view, the applicant Nafiyaz/A-2 would not be entitled to bail in terms of Section 437(1)(i) of the Code and this is irrespective of the plan that on the failure to secure the ransom the deceased was put to

death, to wipe out the evidence. Regarding this aspect of the case also it cannot be said that the applicant Nafiyaz/A-2 had no part to play. At the relevant time, the applicant Nafiyaz/A-2 was in the company of Rohan/A-1 and the latter was in touch with Ryan/A-4 and was constantly inquiring as to what had happened to Mandar and whether he was killed and Rohan/A-1 had also goaded Ryan/A-4 to ensure that Mandar was killed once for all. Subsequently, all five had met together where discussions were held whether Mandar was really killed and was dead. It is difficult to accept in the fact situation at this stage, that the decision of Ryan/A-4 to kill Mandar was unilateral without the connivance of Rohan/A-1 and Nafiyaz/A-2 who were together and were in touch with Ryan/A-4 on their mobiles. In the circumstances, the contention that the applicant, Nafiyaz/A-2 had no intention to cause any harm to Mandar could not be accepted and the facts do show that the applicant Nafiyaz/A-2 was very much a part of the plan when Ryan/A-4 started hitting him on the head and strangulated him with a rope with a view to kill him so that there was no evidence left. The applicant Nafiyaz/A-2 is involved in an offence which is grave and the punishment provided for, is severe. In such a situation, the Court is bound to presume that no amount of bail

would secure the presence of the applicant Nafiyaz/A-2 at the trial in the event he is released on bail and on that count alone the applicant Nafiyaz/A-2 would not be entitled to be released on bail.

19. Before concluding, it may be observed that the deceased Mandar was a child within the meaning of the definition of the word "child" as given in Section 2(d) of the Goa Children's Act, 2003 but that child is no more, that child having been murdered by the accused. All the accused are majors. The charge-sheet has also been filed under Section 8(2) of the Children's Act, 2003 with the allegation that Mandar being a child was abused as defined in Clause 9 of Section 2 of the said Act. There is no doubt that in terms of Section 30 of the said Act the Children's Court has been given jurisdiction to try all offences against children whether such offence is specified under the Act or not. Since the main offence is under Section 364-A of I.P.C. as submitted on behalf of the applicant Nafiyaz/A-2 and this is a first case of this type filed before the Children's Court where there is no child left but only adults as accused, the Children's Court will do well to determine the issue of its own jurisdiction to try the accused after hearing the

prosecution as well as the accused, uninfluenced by the observations made herein.

20. With the above observations, I proceed to dismiss the application for bail filed on behalf of the applicant Nafiyaz/A-2. Order accordingly.

N. A. BRITTO, J.

RD